

FILIPINAS INVESTMENT & FINANCE CORPORATION, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

G.R. No. L-23501. May 16, 1967

Ponente: REYES, J. B. L., J.

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REYES, J. B. L., J.:

This is an appeal by petitioner from a resolution of the Court of Tax Appeals, in its CTA Case No. 1450, dismissing its petition for review filed in said court, on the ground that the same was filed beyond the 30-day period prescribed in Section 11 of Republic Act No. 1125.

The facts of this case are:

Respondent Commissioner of Internal Revenue, through the Director of Regional District No. 3, issued a letter dated April 18, 1961, to petitioner Filipinas Investment & Finance Corporation, assessing against the latter the sum of P5,007.00 as advance sales tax on an automobile which it purchased from a tax-exempt individual, plus P300.00 as compromise penalty, or a total of P5,307.00. (Exhs. 1, A, CTA rec., P. 62).

Believing itself not liable therefor, petitioner, through counsel, disputed the above assessment in a letter dated May 15, 1961, and requested that the same be cancelled and/on withdrawn. (Exhs. 3, B, CTA rec., pp. 64-65).

Meanwhile, BIR Assistant Regional Director Toledo followed up said assessment with a demand letter dated June 21, 1961 (Exhs. 2, C, CTA rec., p. 66), to which petitioner replied, calling the former's attention to its letter of May 15, 1961 which contested the assessment and has not yet been acted upon. (Exhs. 3-A, D, CTA rec., p. 68).

Respondent Commissioner denied petitioner's request for cancellation and/or withdrawal of the assessment in a letter dated August 17, 1962, which was sent to petitioner. (Exhs. 4, E, CTA rec., pp. 71-72). The record does not, however, show when petitioner received this letter of denial; but, in a letter dated September 28, 1962, which respondent Commissioner received on October 1, 1962, petitioner reiterated its request that the said assessment be cancelled and/or withdrawn. (Exhs. 8, F, CTA rec., p. 79).

In the meantime, the BIR record of petitioner was transmitted, on September 24, 1962, to its Collection Branch for collection by summary remedies (Exh. 5, CTA rec., p. 73); and pursuant thereto, Regional Director Tagle sent directly to petitioner (not to its counsel) another demand letter dated September 25, 1962, enclosing therewith a copy of the letter of denial of August 17, 1962. (Exhs. 6, F-1, CTA rec., p. 74).

On October 18, 1962, petitioner answered the above-mentioned letter, making reference to its counsel's letter of September 28, 1962. (Exhs. 7, F-2, CTA rec., p. 75).

On January 23, 1963, petitioner, through its counsel, further moved to reconsider the denial of its original request for cancellation and/or withdrawal of the assessment. (Exhs. 8-A, G, CTA rec., p. 80).

On July 22, 1963, respondent Commissioner again denied petitioner's requests (of September 28, 1961 and

January 23, 1963) for reconsideration of the assessment (Exhs., H, CTA rec., pp. 82483); which letter of denial, petitioner received on August 12, 1963.

On September 11, 1963, petitioner filed its petition for review in the Tax Court, disputing the legality of the imposition of advance sales tax on the purchase and subsequent sale of the said automobile.

On November 29, 1963, respondent Commissioner presented, on the strength of the above-stated facts, a motion to dismiss said petition, on the ground that the Tax Court acquired no jurisdiction over the subject matter since the same was filed beyond the 30-day period fixed in Section 11 of Republic Act No. 1125.

Petitioner opposed said motion.

On January 25, 1964, the Tax Court conducted a preliminary hearing on respondent's motion to dismiss; and thereafter, the parties submitted their respective memoranda.

On August 8, 1964, the Tax Court, after finding that petitioner consumed thirty-three (33) days in filing its petition for review from the date of receipt of respondent Commissioner's ruling on the disputed assessment, computed as follows:

From September 28, 1962, deemed date of receipt of
decision to October 1, 1962, filing of request
for reconsideration..... 3 days
From August 12, 1963, date of receipt of denial of
request for reconsideration to September 11, 1963,
filing of the petition for review..... 30 days
Total – 33 days

issued its resolution, sustaining respondent Commissioner's motion to dismiss. Not satisfied, petitioner appealed to this Court.

Petitioner-appellant assails the above conclusion and ruling of the Tax Court, contending that respondent Commissioner's letter of July 23, 1963, which it received on August 12, 1963, is the appealable decision to the Tax Court and not respondent's letter of August 17, 1962, which is not a decision on the disputed assessment. Hence, computing the period from August 12, 1963 when it received the letter of July 23, 1963, up to September 11, 1963 when it filed its petition for review, the same was filed exactly on the thirtieth day and well within the reglementary period prescribed in Section 11 of Republic Act No. 1125.

The appealed resolution should be affirmed. It should be noted that respondent Commissioner's letter-assessment of April 18, 1961 became a "disputed" assessment when petitioner requested for the cancellation and/or withdrawal of the same in its letter of May 15, 1961 (*St. Stephen's Association vs. Collector of Internal Revenue*, 104 Phil., 314; that respondent's letter of August 17, 1962, denying petitioner's request for cancellation constitutes the decision on the "disputed" assessment, which is appealable to the Tax Court as contemplated under Sections 7 and 11 of Republic Act No. 1125;[1] that petitioner's letter of September 28, 1962 which respondent received on October 1, 1962 is a mere pro-forma request for reconsideration of the letter-decision of August 17, 1962 and did not adduce new facts or arguments and that respondent's letter of July 22, 1963 which petitioner received on August 12, 1963 is the resolution on the said request for reconsideration (*North Camarines Lumber Co., Inc. vs. Collector of Internal Revenue*, G. R. No. L-12353, September 30, 1960).

The appellant's contention that the letter-decision of August 17, 1962 did not touch on its allegation in its preceding letter (of May 15, 1961) that the automobile had passed through three previous non-tax exempt-owners before reaching appellant's hands is not tenable. The Commissioner's letter aforesaid expressly declared that, "According to the findings of our examiners, your client is the first non tax exempt entity to acquire ownership over the car in question;" and these words directly contradicted and overruled appellant's pre-tense.

Considering that the period to appeal from a decision of the Commissioner of Internal Revenue to the Tax Court under Republic Act No. 1125 is jurisdictional and non-extendible,[2] and that a taxpayer may not delay indefinitely a tax assessment by reiterating his original defenses over and over again, without substantial variation, the Tax Court correctly dismissed the petition for review filed by petitioner.

WHEREFORE, the appealed resolution should be, as it is hereby, affirmed. With costs against petitioner-appellant.

SO ORDERED.

Concepcion, C.J., Dizon, Regala, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, and Castro, JJ., concur.

[1] Villamin vs. Court of Tax Appeals, et al., G. R. No. L-11596, October 31, 1960; Pangasinan Transportation Co., Inc. vs. Blaquera, 107 Phil., 975.

[2] Acting Commissioner of Internal Revenue vs. Joseph, G. R. No. L-14034, August 20, 1962, citing Johnston Lumber Co. vs. CTA, 101 Phil. 151, and Gibbs vs. Collector, G. R. No. L-13453, February 29, 1960; Pangasinan Transportation Co., Inc. vs. Blaquera, supra, citing Lim Lio vs. Collector, G. R. No. L-10681, March 29, 1958.

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